~~1951~~

File No. S. DW R. 4/51

Legal DEPARTMENT

~~A~~ BRANCH

Subject:— Suits Dhanwar

In the court of the Civil Judge (S D)
Civil Suit No. 175 of 1950
Shrinivas Hariharrao Desai — Plff
VS.
The union of India — Defts

For possession of suit property with past and future mesne profits

S. DWR 4/51

S. DWR 4/51

CONTENTS.

Legal Department File No. S. DWR 4/57

Sr. No.	Compilation No.	Subject	Pages.

Suits Dharwar

C. S. No. 175 of 1958.

Shrinivas Murharrao Desai

Vs.

Union of India.

For possession of suit property with past and future mesne profits.

1—58

S.C. Suit No.175 of 1950.

In the Court of the Civil Judge, Senior Division, Hubli.

Shriniwas Muraharrao Desai of Sheshagiri,
age 66, occupation agriculture, residence
Extension Haveri, District Dharwar (Bombay).... Plaintiff;

Versus.

The Union of India. .... Defendant.
Claim Rs. 320/-

In this the above named plaintiff begs to submit as follows :-

1. Suit property.-

The two storied residential building village Panchayat No.11110 of Hangal, District Dharwar, situate within the following boundaries :-

To the East.- House of Budansab Katgi.

To the West.- House of Gangadhar Pant

To the South.- Public Road.

To the North.- Backyard of the house and beyond that public road.

2. The plaintiff is the owner of the above named house and backyard hereinafter called "the suit property". The defendant has been occupying the suit property as a tenant for a fixed period of five years since 1944 by virtue of a registered lease deed, executed by the Superintendent, Posts and Telegraph, Dharwar on behalf of the Governor General of India in Council, on a rental of Rs. 10/- per month. The defendant has been using it for the purpose of Post office. The said lease has expired on 31-8-49.

3. Now the plaintiff has decided to live separately at Hangal which is a covenient place for the management of his estate. Thus for more than one reason too delicate to be mentioned here, the plaintiff is compelled to live at Hangal.

The plaintiff has accordingly intimated to the defendant that he bona fide and reasonably requires the house for personal occupation and requested the defendant to vacate the same on or before 1st January 1950. But the defendant

refuses to vacate the same.

The defendant has not paid the rent from the month of September 1949.

The house being neglected by defendant and is seriously damaged.

Hence the suit for rent and ejectment of defendant from the suit property and for damages. Now the plaintiff will have to pay Rs. 40/- per month for house equal to suit property. Hence mesne profits at the rate of Rs. 40/- per month is claimed.

4. The cause of action arose on 1st September 1949 and subsequently on 1st January 1950.

5. The suit property being situated within the special jurisdiction of this court and this being a suit against Government, this court has jurisdiction to try this suit.

Valuation.- This suit being a suit for rent and possession is valued for the purposes of court fees as follows :-

Rs. 120-0-0	One year's rent at the rate of Rs. 10/- per month.
Rs. 200-0-0	The amount of rent sue and claimed in the suit at the rate of Rs. 40/- per month.
	Amount of damages.
Rs. 320-0-0	

and court fee is paid on the same. For the purposes of jurisdiction and pleader's fee the suit is valued at Rs. 5000/- being the market value of the suit property.

6. Notice under section 80 of the Civil Procedure has been served on the Secretary to Government of India by registered post.

Prayer.-

1. The defendant be ordered to deliver actual possession of the property to the plaintiff.
2. That defendant be ordered to pay Rs. as rent and damages.
3. The plaintiff be awarded mesne profits from date of suit upto date of delivery of possession and costs of suit.

Date 15-4-1950.

In this .....

+3

In this, I Shriniwasrao Murharrao Desai, of Sheshagiri, do hereby state on solemn affirmation that what is stated above in paragraphs 1 to 4 are true to the best of my knowledge and belief obtained from documents or otherwise, in testimony whereof I have signed this at Haveri, on 15-4-1950.

K. 5/12.

49 5.

Dharwar Civil Suit No.175 of 1950.

This is a suit for possession of the suit premises with past and future mesne profits.

The plaintiff cannot evict the defendant under the provisions of the Bombay Rents, Hotel and Loding House Rates Control Act, 1947.

The suit is defensible.

The defence of the suit may be sanctioned on the lines of the accompanying brief.

6/11

A.G.P. Advocate

I agree

A.G.P.
7/11

C.S. 8/11

X No. 16580
7/11/50

No. 15973

Office of the
Remembrancer of Legal Affairs,

Bombay Castle (Bombay No.1), 15th Nov. 1950

Subject:- Dharwar Civil suit No 175 of 1950

MEMORANDUM.

The ~~District~~ Sub Government Pleader, Hubli, is informed that the defence of the suit noted above is sanctioned and he is requested to conduct the same on the lines of the brief, a typed copy of which ~~together with two copies of the written-statement~~ is sent herewith in advance.

Papers of the case in file I received from the Collector accompany.

for Remembrancer of Legal Affairs.

To

The ~~District~~ Sub Government Pleader, Hubli.

Issued
15/11

15/11

Asstt.

tam. 20.4.50.

G.R.L.D. no. 473 dt 8-1-51
sent to Press.
Ward

Await press copies
PAC
15/1.

45 .9

Suits:

Dharwar.

For possession of suit property with past and future mesne profits.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 473.

Bombay Castle, 8th January 1951.

4/57

Letter from the Post Master General, Bombay, No. BRR. 629, dated the 24th August 1950—Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), HUBLI.

Civil Suit No. 175 of 1950.

Shrinivas Murharrao Desai ... ... Plaintiff;

versus

The Union of India ... ... Defendant.

Memorandum to the District Government Pleader, Dharwar, No. 15973, dated the 15th November 1950—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

G. R. No. 478, L. D., dated the 8th January 1951.

To

* The Political and Services Department,
* The Post Master General, Bombay,
The Subordinate Government Pleader, Hubli (with two copies of the brief).

* With a copy of the brief.

No. of 1951.

Copy forwarded for information and guidance to

DHARWAR CIVIL SUIT NO. 175 OF 1950.

Chronological Statement of Facts.

This is a suit for possession of the suit property with past and future mesne profits.

2. The suit property was taken on a lease of 5 years by the Postal Department on a monthly rent of Rs. 10 from 1st September 1944 for the location of post office and the quarters of sub-postmaster at Hangal, district Dharwar. The lease expired on 31st August 1949. The plaintiff was then duly informed by the postal authorities that they have decided to continue in occupation of the suit properties for the same purpose on the existing terms and conditions as to rent, i.e. Rs. 10 per month, under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

3. The landlord served this Department with a notice on 19th August 1949, demanding vacant possession of the suit property with effect from 1st October 1949, as he wanted his building back for his own use and as the building also required urgent repairs. In fact, the repairs have been carried out in June 1940 and in May 1950.

4. The landlord was then intimated by the Superintendent of Post Offices that the Department had decided on the expiry of the above-mentioned lease to continue in occupation, on the same rent i.e. Rs. 10 per month which will be paid to him regularly and expressed his inability of vacating the premises. On 14th December 1949 the Department was again served with a notice by the plaintiff through his pleader, demanding possession of the building on or before 1st of January 1950.

5. In the meanwhile the monthly rent of Rs. 10 was being regularly remitted to the landlord but it was refused by him for the months of September, October and November 1949. The rent for the month of December 1949 is only accepted and thereafter the rent, though remitted, was refused by him.

6. The defendant has been served with a notice under section 80 of the Civil Procedure Code and on 21st July 1950 he filed this suit in the Court of Civil Judge, Senior Division, Hubli.

Grounds of Defence.

The statutory notice under section 80 of the Civil Procedure Code is not in case papers. The District Government Pleader may obtain a copy of the said notice and verify whether any defences can be raised regarding strict compliance with the provisions of section 80 of the Civil Procedure Code.

2. It is contended by the plaintiff in paragraph 3 of the plaint that he wants the suit property *bona fide* and reasonably for his personal use and occupation. This contention of the plaintiff is not tenable. The plaintiff usually stays at Haveri. He has more places than one for his residence. The reason given in the plaint is simply a dodge to recover possession of the suit property under some pretext. This fact is amply borne out by the demand of arrears at an excessive rate of Rs. 40 per month i.e. four times the originally agreed rate. Moreover, the greatest hardship will be caused to the defendant and the public by the removal of the post office from the suit premises. The plaintiff's purpose in demanding possession of the suit properties is, therefore, neither *bona fide* nor reasonable. The defendant has paid and is ready and willing to pay the rent originally agreed in the lease and has informed the plaintiff accordingly. The plaintiff is not entitled to possession of the suit premises under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

3. It is also contended that the house is neglected by the defendant and so requires damages. The plaintiff has carried out the necessary repairs of the suit premises in June 1940 and May 1950. Defendant has done nothing to cause damage to the suit premises. This contention of the plaintiff in paragraph 3 of the plaint is therefore without any substance.

4. The plaintiff is not entitled to demand Rs. 200 as arrears of rent at the rate of Rs. 40 per month. The agreed rent is Rs. 10 per month. The defendant has regularly sent per month's rent to the plaintiff by money-order, but the plaintiff refused to accept excepting the rent for the month of December 1949. The defendant is not in default. The defendant is ready and willing to pay the rent at the rate of Rs. 10 per month.

For these reasons it should be contended that the suit fails and should be dismissed with costs.

Received on 18/4/51.
Registered on 9/6/50.
Decided on 20-4-51.
Duration : 10 months and 11 days.

In the Court of the Civil Judge, Senior Division,

at Hubli. Ex. 44.

Pleaders : -

S. C. Civil suit No. 175 of 1950.

Shri.S.H.Desh-[illegible]de.

Shrinivas Muraharrao Desai of Sheshagiri, 66, agriculturist, of Haveri District Dharwar.....Plaintiff.

Against.

Shri. B. R. Mathad.

Union of India.....Defendant.

Claim Rs.170/-

This is a suit for recovery of possession and arrears of rent and compensation under the Rent Control Act .

The Deft's written statement is at Ex. 19. They plead want of valid notice under section 80 C. P. C. and Section 12 of the Rent Control Act. They say that the building is not required bona fide for his personal use . They are willing to pay the rent regularly. They cannot be evicted under the Rent Control Act.

The issues for decision are framed at Ex. 20 : -

1. Whether plff proves that the notice under Section 80 C.P.C. is valid ?
2. Whether plff proves that the tenancy has been terminate by a legal notice ?
3. Is the suit barred by estoppel ?
4. Is it proved by the Plff that the building is requir ed reasonably and bona fide for his personal use ?
5. Who is put to more hardship and inconvenience ?
6. Whether plff can claim enhanced rent or damages ?
7. Whether plff can claim possession under the Rent Control Act of 1947 ?
8. What order ?

My findings are :-

1 :- Not pressed. 2 :- No. 3 :- Not pressed.

4 :- No. 5 :- Does not arise.

6 :- Does not arise. 7 :- No. 8 :- As per order below.

Reasons.

The deft does not press the first issue.

The suit premises have been let to the deft for the purpose of a post office. There is no dispute as regards the monthly rent of which is Rs. 10/-. The plff wants the deft to vacate the premises because ~~he wants the premises know this for his personal use.~~ the lease expired on 31-8-1949 and he wants the premises bona fide for his personal use. The plff admits in his cross-examination that the defts have been paying the rent regularly and that in fact they have paid rent to him till suit. If so on his own admission, he is not entitled to evict the defendant from the suit premises. No notice as contemplated by section 12 of the Rent Control Act is given to deft. The Plff at the trial stated that he wanted the premises not for his personal use but for the purposes of his Kamat i.e. for the purpose of his farm establishment. But on that ground he cannot evict the deft when it is not wanted by him bona fide for his personal use.

The Plff with a view to put the deft to heavy costs has in his notice Ex. 29 deliberately valued the suit at Rs.5000/- for the purposes of jurisdiction and pleader's fees. Subsequently he realised his folly and amended the plaint in respect of this point. The plff therefore should pay the Government their costs on the basis of the original valuation of the suit. He should therefore pay the pleader's fees also on that basis. Hence my finding as above.

Order.

Plaintiff's suit is dismissed with costs. Plff to bear his own costs. Defendant's costs are to be assessed on the original valuation of the suit namely Rs. 5000/-.

20-4-1951. Sd/- [illegible]

Decree.

Ex. No.

In the Court of the Civil Judge, Senior Division,
at Hubli.

Small Cause Suit No. 175 of 1950.

Plaintiff :- Shrinivas Murahariao Desai of Ghoshagiri, age 66, occupation agriculture, residence extention Haveri District Dharwar.

Vs.

Defendant :- The Union of India.

Claim Rs. 170/-.

This suit filed on 10/4/1950.
" registered on 9/6/1950.

In this the abovenamed plaintiff begs to submit as follows :-

1. Suit property : The two storied residential building village Panchayat No. 1110 of Kengal, District Dharwar situate within the following boundaries .

To the east : House of Dudansab Katagi
To the west : House of Gangacharpant .
To the south : Public Road
To the north : Backyard of the house, and beyond that public road.

2. The plff is the owner of the abovenamed house and backyard hereinafter called "the suit property". The deft has been occupying the suit property as a tenant for a fixed period of five years since 1944 by virtue of a registered lease deed, executed by the Superintendent Post and Telegraph Dep - Dharwar, on behalf of Governor General of India in Council on a rental of R pees Ten per month. The deft is using it for the purpose of post office and said lease has expired

2. Now the plff has decided to live separately at Mangal which is a convenient place for the management of his estate . Thus for more than one reason too delicate to be mentioned here the Plff is compelled to live at Mangal.

The plff has accordingly intimated to the deft that he bona fide and reasonably requires the house for personal occupation and requested the deft to vacate the same on or before 1st January 1950. But the deft refuses to vacate the same.

The deft has not paid the rent from the month of September 1949.

The house being neglected by deft and is seriously damaged . Hence the suit for rent and ejectment of deft from the suit property and for damages .

3. The cause of action arose on 1st September 1949 and subsequently on 1st January 1950.

4. The suit property being situated within the special jurisdiction of this court and this being a suit against Govt. this court has jurisdiction to try this suit .

Valuation : The suit being a suit for rent and possession is valued for the purposes of Court fees as follows:

Rs.120/0/0. One year's rent at the rate of Rs. 10/- per month.

50/0/0. The amount of rent due and claimed in the suit at rate of Rs. 10/- per month .

Rs. 170/0/0 Amount of damages and court fees i.e. paid on the same for the purposes of jurisdiction and plender's fees . The valuation is the same . * The plaint is amended as per Ex.C.

5. Notice under section 80 of the Civil Procedure Code has been served on the Secretary to Government of India by registered post.

Prayer : -

1) The deft be ordered to deliver actual possession of the property to the plaintiff .

ii) That deft be ordered to pay Rs. 50/- * as rent and

17

111) The plaintiff be awarded mesne profits from date of suit upto date of delivery of possession and costs of the suit.

This suit coming on this day the 20th April 1951 before Shri. S. H. Bhoj Civil Judge, Senior Division Hubli in the presence of Shri. S. H. Deshpande Pleader for plaintiff and Shri. B. R. Mathad Pleader for defendant, it is now hereby ordered and decreed as under :-

Plaintiff's suit is dismissed with costs.

Plaintiff to bear his own costs .

Defend-nt's costs are to be assessed on the original valuation of the suit namely Rs. 5000/-.

Bill of costs.

Plaintiff.		Defendant.	
Stamp for plaint Ex.1.	Rs.30/0/0.	Stamps for vakalt Ex. 19.	Rs. 0/10/0
" for 2 vakalat Ex. 2.	0/10/0.	" for applications Exs. 13,16,18,20.	2/8/0.
" for processes Ex.1.	1/0/0.	Pleader's fees on Rs.5000/- assessed as per order of the Court.	190/0/0.
Pleader's fees on Rs.5000/-	170/-.		
	15/0/0.		
Total.	48/8/0.	Total.	193/8/0.
Applications disallowed. Ex. 5, 22.	1/4/0.	Applications disall disallowed Exs.13,16, 18.	1/14/0.
Balance Rs.	47/4/0.	Balance	191/4/0.

Given under my hand and seal of this Court on 20th day of April 1951.

Sd/-P.S.Kalkarni. (Seal) Sd/-S.H.Bhoj.

Karkun. Civil Judge,S.D.

Pleader for Plff.: Shri.S.H.Deshpande. 5-6-51.

Pleader for Deft : Sd/- B.R.Mathad. 5-6-51.

59 19

Suits;
Dharwar.
For possession of suit property with past and future mesne profits.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 11876
Bombay Castle, 26th July 1951.

Read Government Resolution, Legal Department No.473, dated the 8th January 1951.

Letter from the District Government Pleader, Dharwar No. 367, dated the 28th April 1951, stating that the suit noted in the margin was decided by the Civil Judge, Senior Division, Hubli Dharwar on the 14th April 1951, when the following order was passed:-

In the Court of the Civil Judge (Senior Division), Hubli.	
Civil Suit No.175 of 1950.	
Shrinivas Murharrao Desai..... Plaintiff.	
versus.	
The Union of India..... Defendant.	

" Plaintiff's suit is dismissed with costs. Plff. to bear his own costs. Defendant's costs are to be assessed on the original valuation of the suit namely Rs.5000/-."

Letter from the District Government Pleader, Dharwar No.545 dated the 26th June 1951, forwarding uncertified copies of the judgment and decree.

RESOLUTION: The result of the suit is recorded.

By order of the Governor of Bombay,

Issue
26/7
original

R.T.Katarki,
Deputy Secretary to Government.

To
The Political & Services Department,
The Post Master General, Bombay,
The Sub-Govt.Pleader, Hubli.
The District Government Pleader, Dharwar.

KML/25

Submitted for signature.
PM
25.7.51
J.S. MD 25.7.51
D.S. (Civil)

60

21

In the Court of the 3rd Joint Civil Judge (S.D.)
at Ahmedabad.
R. Civil Suit No. 168 of 1949.

Sayad Abdulkadri Sardar Samsuddin Kadri. Plaintiff.

against.

1. State of Bombay.
2. The Collector of Ahmedabad. Defendants.
3. B.C.Rammani.
4. N.P.Thanvani.

Claim Rs. 2255/-.

The facts, in short, of plaintiff's suit.

1. The plaintiff sues to get a decree for (1) a declaration that the order No. R.E.Q. 360 dated 18th October 1948 of the deft. No.2 and the erratum in respect thereof dated 23rd October 1948 are illegal and ultravires and are not binding on the plaintiff and that the possession of the suit premises is illegally handed over to the defts. Nos. 3 and 4 by the defts. Nos. 1 and 2 and for (2) recovering the possession of the suit premises from the defts. together with the mesne profits at the rate of Rs. 150/- per month from 27-10-48 when the possession was illegally taken from the plaintiff till the date of the suit and the costs of the suit and future mesne profits at the above rate and for (3) a permanent injunction restraining the defendants from removing or damaging the articles of the plaintiff stored in the suit premises.

The facts of the suit as averred by the plaintiff, are in short, as follows:- The plaintiff owns a house known as Baddhabhai Diwan's Haveli (the ground floor and the upper floor respectively) bearing M.C.Nos. 1962 and 1962 1/1) situated at Raikhad Ahmedabad. The plaintiff has been in possession and occupation of the said house for a number of years using the ground floor for storing his valuable materials worth Rs. 15000/- such as records, marble sheets, cement etc. and the upper floor for his office and the accomodation of his guests. The said house has never been vacant and it has been never been rented. The plff. has no other accomodation for storing his aforesaid valuable

aforesaid valuable articles nor has he any other place for his office or the accommodation of his guests. The plff. was served with an order No. R.E.& S. 360 on 19-10-48 at about 5 P.M. It was passed by the deft. No.2 for requisitioning the house bearing M.C.No. 1960 and still the suit house was sealed on the same night in the absence of the plff. Thereafter on 20-10-48 the plaintiff made an application to the City Deputy Colledtor, Ahmedabd, for cancelling the said order on the ground of its being illegal and ultravires. On 23-10-48 the plaintfff was served with an erratum of the aforesaid order on 23-10-48 substituting M.C.No. 1962 for M.C.No. 1960. The suit house was again sealed on behalf of the deft. No.2 on the night of 23-10-48 and in the morning of 24-10-48 the lock of the said house was broken open and a panchnama of the materials lying in the ground floor was made and some of the rooms, wherein the materials were stored were sealed. Despite the fact that even the erratum referred to M.C.No.1962 only, the defts. illegally took possession of the whole house. (including the upper floor bearing M.C.No. 1962/1-1), whereupon the plaintiff filed Civil Suit No. 2252/48 against the defts. Nos. 3 and 4 but subsequently withdrew it, with permission to file a fresh suit, as statutory notice required by sec. 80 of Civil Procedure Code was not given to the Government by the plff. before filing the said suit. It is also averred by the plaintiff in the plaint that the Bombay Land Requisition Act, 1948, under which the aforesaid order of requisition and the erratum thereof were passed, is itself ultravires and the defts. Nos. 1 and 2 are not entitled to requisition the suit premises and take possession thereof from the plaintiff under the said order and erratum. Under the aforesaid circumtances, the plaintiff has filed the present suit on the expiry of the statutory period after giving the statutory notice to the defts. Nos. 1 and 2 under sec.80 of Civil Procedure Code, praying for the reliefs that are set out in the begining of this paragraph.

The Written Statements of defendants, Exhs. 29,23 & 19.

2. The defts. nos. 1 and 2 contend in the written statement exh. 29 that the suit premises were admittedly neither used by the owner nor were let out to any tenant for a continuous period of six months prior to the date of order of requisitioning the

23 — 25

requisitioning the same, that the order of the Collector requi-
-sitioning the suit premises is legal, proper and intravires, that in the original order dated 10th October 1948 there was a bonafide mistake in the description of the property but the order was corrected on 23-10-48 by an erratum substituting M.C. No. 1962 for M.C.No. 1960 and this was done before the possess-
-ion was given to defts. Nos. 3 and 4, that the mistake was cor-
-rected and this change does not affect the validity of the order; that besides the plaitiff knew as to that premises were requisitioned, that the possession of the suit premises, which were requisitioned by the Collector, was given to defts. Nos. 3 and 4 on 24-10-48, that the various allegations made in the plaint (paras 1-2-3-4-5-6-8 and 9) are not true and are not admitted and that the plaintiff is not entitled to any relief and the suit should be dismissed with costs.

The defendants Nos. 3 and 4 contend in written statements exh. 23 and 19 that the suit is barred as Resjudicata by suit No. 2252/48. Their other contentions are inlive with the conten-
-tions of defendants Nos. 1 and 2. Their pleader however has retired on 18-1-51 (vide purshish exh. 33) and they have not remained present thereafter nor have they laid any evidence.

3. Issues (exh.34):-

Issues exhibit 34.

1. Whether the order No. R.T.).360 of deft. No.2 of 18-10-48 and the amendment thereof of 23-10-48 are illegal and ultravires as alleged in the plaint ?

1-A. Whether by the requisition order the census No. 1962 was properly taken possession of, if not mentioned in the requisition order ?

1-B. Whether the suit is barred as Resjudicata by S.No. 2252/48 as contended by defts. Nos. 3 and 4 in their written statements exhs. 19 and 23 ?

1-C. Whether the Land Requisition Act is ultravires and illegal as contended in exh. 44 ?

2. To what reliefs is the plaintiff entitled ?

3. What decree ? What order ?

4. Findings:-

1. No. 1-A. Yes. 1-B. No. 1-C. No. 2. Nil.

3. As set out in the last paragraph

5. Reasons.

The defendants Nos. 3 and 4 contend in their para 5 of

of their written statements exhs. 19 and 23 that the plaintiff had filed a Civil Suit No. 2252/48 against them on about 25-10-48 in the Court of the 3rd Joint Civil Judge J.D. and the said suit was dismissed by the said Court and so the present suit of the plaintiff is barred as Resjudicata. The plaintiff states in his deposition exh. 57 that he had withdrawn that suit with the per--mission of the Court as statutory notice was not given by him to Government before filing that suit, that thereafter he served the Government and the Collector with the statutory notice exh. 54 and after the expiry of the statutory period he filed the present suit. This statement of the plaintiff has not been con--traverted by the defts. in the cross-examination or by any evidence on the record. The former suit was filed against only defendants Nos. 3 and 4 and the same was filed in the Court of the Civil Judge (J.D.), whereas the present suit has been filed in the Court of the Civil Judge (S.D.) and it has been filed against all the defendants Nos. 1 to 4. Besides, the former suit was withdrawn with permission of the Court to file a fresh suit as statutory notice was not given to the Government by the plaintiff before filing that suit and the present suit has been filed after giving the statutory notice to Government required by sec. 80 of Civil Procedure Code after the expiry of the statutory period. Under the circumtances, the present suit can not be held to be barred as resjudicata by Civil Suit No. 2252/48 I therefore find in regard to issue No.1-B in the negative as stated in para 4 hereof.

Issue No.1-C was added on account of the application exh. 44 of the plaintiff's pleader, wherein the Bombay Land Requisition Act has been challenged as illegal and ultravires because of its being against the fundamental rights of the plaintiff acq--uired under the Constitution of India. The Bombay Land Requis--ition Act, 1948, came into force on 11-4-48. The Constitution of India came into force on 26-1-1950. Article 31 sub-clause (2) of the Constitution of India runs as follows:-

"No property, moveable or immoveable shall be taken poss--ession of or acquired for public purposes under any law authorising the taking of such possession and or such acqui--

-ition, unless the law provides for compensation for the p

25 27

for the property taken possession of or acquired and either fixes the amount of compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given". Article 31 sub-clause 5 states that nothing in clause (2) shall affect (a) the provisions of any existing law other than a law to which the provisions of clause(6) apply --- and A-31 sub-clause (6) states that any law of theState enacted not more then eighteen months before the commencement of this Constitution may within three months from such commencement be submitted to the President for certification, and thereupon if, the President by public notifications so certifies, it shall not be called in question in any Court on the ground that it contravines the provisions of clause (2) of this article or has contravined the provisions of sub-section 2 of sec. 299 of the Government of India Act, 1935. Reading article 31 sub-clause (2) with sub-clauses (5) and (6), I think that the existing laws of the State created eighteen months prior to the commencement of the Constitution are not affected by sub-clause (2) of the art. 31. Article 13(1) states that all laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall to the extent of such inconsistency , be void. But it is held by the Supreme Court in a recent ruling that appeared in the Times of India of 23-1-1951 that the validity of laws that are inconsistent with the Constitution will continue to exist so far as the past acts are concerned and that art. 13(1) is not retrospective. The Bombay Land Requisition Act, 1948, came into force more than eighteen months prior to the commencement of the Constitution of India and the order and the erratum that are complained of in this suit are respectively dt. 18-10-48 and 23-10-48 i.e. they were passed under the Bombay Land Requisition Act, 1948, long before the Constitution of India came into force. Hence, the Bombay Land Requisition Act, 1948 is not affected by art. 31 sub-clause (2) of the Constitution of India and article 13(1) cannot be said to affect the complained oforder of the and erratum respectively dated 18-10-48 and 23-10-48 that were passed under the Bombay Land Requisition Act, 1948.

Article 19 sub-clause (1) (f) states that all citizens shall have the rightbto acquire , hold and dispose of property but sub-clause (5) thereof states that nothing in sub-clause (d) (e) and (f) of the said clause shall effect the operation of any existing law in so far as it imposes ----- reasonable restrictions on the exercise of any of rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Schedules Tribe. The Bombay Land Requisition Act, 1948, comesxinto under sub-clause (5) of article 19 and so, sub-clause 1(f) of article 19 cannot affect the operation of the Bombay Land Requisition Act, 1948. For reasons stated above, I hold that the Bombay Land Requisition Act, 1948, is not ultravires and illegal as contended in exh.44 and find in regard to issue No. 1-B in the negative.

Now to issues Nos. 1 and 1-A. The facts of the suitare set out in paragraph 1 hereof and I do not propose to reiterate them. Kuber-das Motiram Parekh states in his deposition exh.66 that the people in the neighbourhood call the suit premises as Bhutio Bungalow and also as Badshahi Diwan's Haveli. This statement of Kuberdas Motiram Parekh is not controverted in the cross-examination by the plaintiff. Hence the suit premises may either be called Badshahi Dewan's Haveli or Bhutio Bungalow. What has been requisitioned by the order No.R.E.), 389 dated 18-10-48 of the Collector, Ahmedabad, is the Bhutio Bungalow as it is specifically mentioned in the said order exh. 45. The description of the requisition premises given in the said order runs as follows:- "Premises bearing M.C.No. 1960 called Bhutio Bungalow in Kaikhad, Jamalpur Ward, Ahmedabad". The primary part of the description points to the Bhutio Bungalow being requisitioned. From the error in mentioning the M.C.No. 1960 it can notbe said that the house bearing M.C.No. 1960 was requisitioned and not the Bhutio Bungalow that is pointedly mentioned in the order exh. 45. Had only the M.C.No. 1960 been mentioned and not the Bhutio Bungalow, the inference would have been properly drawn that the Bhutiom Bungalow was not requisitioned but the house bearing M.C.No. 1960 was requisitioned. The panchnama made on 19-10-48 exh. 46 shows that both the ground floor and the upper floor were sealed This too shows that the premises that were to be requisitioned by order exh. 45 were the suit premises known as Bhutio Bungalow ---

Bhutio Bungalow compriding of both the upper floor and the ground floor. Even the application exh. 48 was given by the plaintiff on 20-10-48 points to an inference that the Bhution Bungalow comri--sing of both the upper floorand ground floor was sealed for bein-g requisitioned. The error in M.C.No. was subsequently corrected by the erratum of 23-10-48 exh. 50 which substituted M.C.No. 1962 for M.C.No. 1960. Even the plaintiff has described in exh. 48 the Badshahi Dewan's Havelli, otherwise known as Bhutio Bungalow, as bearing M.C.No. 1962. He has not stated therein that only the ground floor thereof bears M.C.No. 1962 and the upper floor bear-s M.C.No. 1962/1-1. Under the circumtances, the error regarding the M.C.No. ~~1962/1-1~~ that was subsequentlycorrected by the erratum dated 23-10-48 exh. 50 substituting M.C.No. 1962 for 1960 on the strength of the plaintiff's application exh. 48 seems to my mind to be a bonafide error. After the erratum order of 23-10-48 was passed no application is proved to have been given by the plff. stating by way of protest that the ground floor of the requisitio--ned Bungalow bears M.C.No. 1962 and the upper floor thereof bears M.C.No. 1962/1-1, and that the upper floor bearing M.C.No. 1962/1--1 was not requisitioned but only t e ground floor bearing M.C.No. 1962 was requisitioned. This shows that the contention of the plff that if the Govt. wanted to requisition whole building then M.C.No 1962/1-1 should also have been mentioned in the requisition order is an after thought that seems to have for the first time struck the plaintiff at the time of giving the statutory notice exh. 54 This after thought could not be allowed to be exploited by the plaintiff especially when the plaintiff knew all along that what was requisitioned by the order of requisition was the suit house known as Bhutio Bungalow, the Badshahi Dewan's Havelli compri si--ng of both the upper floor and the ground floor and when the primary part of of the description of the requisitioned premises was the Bhutio Bungalow (compriding of both the floors) pointedly mentioned in the requisition order exh. 45. The fact that a subse--quent erratum order was passed on 3-2-50 i.e. during the pendency of the present suit exh. 69 substituting the words M.C. o. 1962 for the ground floor and M.C.No. 1962/1-1-for the upper floor of the Badshahi Dewan's Havelli" for words " M.C.No. 1962" cannot be

cannot be held to point to an inference that the upper floor was not requisitioned in the light of reasons given in the foregoing discussion. The said erratum order exh. 69 may only be treated as an order for a mere clarification. It is pertinent to note that Kuberdas had not seen M.C.No. 1962/1-1 on any part of the premises (vide ex. 66) Under the foresaid circumtances, I hold that by the requisition order the Census No. 1962/1-1 was properly taken possession of even if it was not specifically mentioned in the requisition order, as 'Bhutio Bungalow' that comrised of the upper floor and the ground floor was specifically mentioned in the requisitioned order exh. 45 and that part of the description of the requisitioned premises is to my mind the primary part that connected the suit premises and consequently I find in regard to issue No. 1-A in the affirmative.

The requisition order exh. 45 and the erratum thereof exh.50 are passed under sec. 5 of the Bombay Land Requisition Act, 1948, That neither the plaintiff nor his tenant resided in any part of the suit premises house is borne out by the evidence on the record. Kuberdas states in his deposition exh. 66 that the dust must have been for more than a year but he cannot say for what period. He also states in exh. 66 that there was no sign of residence any where on the ground floor or the upper floor and that his report is exh. 49. The report exh. 49 bears out the testimony of Kuberdas. It clearly states that there are no signs of residence in the Havelil The mere fact that some articles are stored in the Bungalow cannot be held as proof of residence. It may be evidence of use but not of residence. Sec. 5 requires actual residence for a continuous period of six months either by the land-lord or by his tenant immediately preceding the date of the order as the words used in sec. 5 are " has actually resided therein ——". The plaintiff states in his deposition exh. 67 that they have never stayed in the ground floor i.e. they have never re-ided therein nor has any tenant or guest has ever resided in the ground floor and that he has got no evidence to show that the upper floor was used by any guest prior to the date on which possession was taken. In the face of the report of Kuberdas exh. 49 the plaintiff has the check to say that every day both the upper floor and the ground floor were beingswept once in a day ~~ax~~ before the date of requisition. Especially when

Especially when the exh. 49 mentions that the plaintiff was pre-sent when the Kuberdas who made the report exh. 49, visited the suit premises on 20-10-48 and also when it mentions that the bungalow was never dusted or cleared and that there are no signs of residence in Havelli, the statement of the plaintiff that the bungalow was swept once in a day before the date of requisition, could not be given any credence whatsoever. When no body actually resided in the suit premises for a continuous period of six months immediately preceding the date of requisition order, the order exh. 45 and the erratum exh. 50 thereof cannot be held as illegal and ultravires. The word 'Land' used in Sec. 5 is defined in Sec. 4(1) as follows:- "Land includes benefits to arise out of land, and buildings and all things attached to the earth or permanently fastened to the buildings or things attached to the earth. This defination of land includes buildings and hence the suit house could be requisitioned by the Collector under sec. 5 of the Bombay Land Requisition Act, 1948. The order exh. 45 and the erratum exh. 50 are not passed under sec. 6 of the said Act and hence the ruling of the State of Bombay V. Virendra Motabhoy Munim reported in 52 B.L.R. 627 cited by the pleader for the plaintiff does not avail the plaintiff. For reasons stated above, I hold that the order Nol R.E.& S. 360 of defendant No.2 of 18-10-48 and the amendment thereof of 23-10-48 are not illegal and ultravires as alleged in the plaint and find in regard to issue No. 1 in the negative.

In the light of the findings in regard to issues Nos. 1, 1-A, 1-B and 1-C, I hold that the plaintiff is not entitledto any relief whatsoever. The possession of defendants Nos. 3 and 4 being legal and not wrongful as it is by virtue of the requisition order exh. 45 and the erratum exh. 50 which are both legal and intravires, the plaintiff is not entitled to any mesne profits as prayed for by him in the plaint. He is entitled to the compensation that may be fixed under sec. 8 of the Bombay Land Requisition Act and this Court is not the forum for the recovery thereof. I therefore find in regard to issue Nos. 2 and 3 as stated in para 4 hereof.

Order:-

6. Order:-

6. Order:

For reasons stated above, I dismiss the plaintiff's suit and order that the plaintiff do bear the costs of both the plff. and defendants Nos. 1 and 2 (of the latter in one set). Defendants Nos. 3 and 4 to bear their own costs.

Dated 16-3-1951.

Sd/--B.D.Bhatt.

3rd Joint Civil Judge (S.D.)
Ahmedabad.

JTK/7.

૩૧

અમદાવાદ ના એ- ઝોન કોર્ટમાં સિવીલ જજ (સી.ડી.) સાહેબની

કોર્ટમાં.

મુકામ સેમરપુર. તા. ની. નંબર ૭૧.

દીવાની દા. નંબર ૧૬૮ સને ૧૯૪૯.

સર્વિસ અબદુલ કાદીર. સાહેબ સરદાર સમશુદીન કાદરી, ઉ.વ.
વ. ૨૭, ધંધો મુખત્યારનામા, વતન કાદરી સર્વિસ ધંધો જીમામદાર
રે. રાયપુર અમદાવાદ. તેમના તરફથી વકીલ શ્રી. જી. એમ. દેસાઈ
હાજર છે ——— વાદી —

વીરૂધ્ધ.

પ્રતિવાદી નં. ૧. રહેટ ઓફ ઇંગ્લંડ.
નં. ૨. અમદાવાદ જીલ્લાના કે. કુલેક્ટર સાહેબ.
નં. ૩. જી. સી રામનાદકી.
નં. ૪. એન. બી. પટવારી.

પ્રતિવાદી નં. ૩ ત્યાર પહેલે હીલ્ડ, ઉ.વ.વ. ૩૬, ૩૦, ના હીલ્ડ. ધંધો નોકરી, હાલ હાલ સીમર, પી. ડબલ્યુ. ડી. ઓફીસર, મેદ્ર, રે. અમદાવાદ, રાયપુર, હાલ હાજરી દીવાનની હકીકી.

દાવો રૂા. ૨૨૫૫ —૦—૦ ના માંડયો.

ઉપર ફરીયાદે હાલના સોલ વાંધાદાર અહિ ગામો મોજે પો-પટે ના સોલ અમલદારી ના અહેદેદારો પર નોર્થ-વીસીલ જજ અમદા સાહેબ શ્રી. જી. ડી. ટાઉ ઓફીસીયાલર, કોલ. ઓલ. જી. ફેનકે, તરફથી વ.પી. જી. એમ. દેસાઈ ના પ્રતિવાદી નં. ૧, ૨ તરફથી વકીલ શ્રી. જી. એમ. દેસાઈ અને પ્રતિવાદી નં. ૩, ૪ ની રોર હાજરીમાં આંતર સીધાલ આપે નીકાલ્યથી. એવું ફેરમવવામાં આવે છે કે આ ઉ૦ ના જાબેદાર મુજબ એવું દુકેલમાનું કેમી આપવામાં આવે છે કે:- જાબેદાર માં જણાવેલા કારણો પર વાદીનો દાવો રદ કરવામાં આવે છે અને એવો દુકેમ કરવામાં આવે છે કે વાદીએ આ દાવા નો પોતાનો ખરચ પોતે ભોગવી અને પ્રતીવાદીઓને ખરચ નો ખરચ એકે જાતનો આપવો. પ્રતીવાદી નં. ૩-૪ એ પોતે પોતાનું ખરચ ભોગવવો.

ખરચનો ફેસલો.

દાવાનો રકમ	રૂા. આ. પા.
વાદીએ ભરેલો કોરટ ફી.	૨૮૩—૦—૦
વકીલ ફી	૫૦—૦—
વકીલ ફી રૂા. ૨૨૫૫/- ઉપર.	૧૦૭—૮—
પ્રોસેસ ફી. આ. ૧૪.	૨૬—૮—
નકલ ફી. આ. ૬૫.	૧—૧૨—
બીજુ કોરટ ફી ખર્ચ ઉપર કલમ.	૦—૬—
	કુલ રૂા. 323—3—

પ્રતિલાકડી નં: ૧-૨ ને થયેલો ખરચ. રૂ.આ.પા.
ટનદાર.

પડીલ કી.
મુ-આરતુઓ.

૧૦૭-૯-૦
૧૦-૦-૦

કુલ રૂ. ૧૧૭-૯-૦

ગાડી આણવાનો ખરચ.
મુ. અંદાજો.

૧૦-૦-૦

કુલ રૂ. ૧૨૭-૯-૦

પ્રતિલાકડી નં. ૩-૪ ને થયેલો ખરચ.

પડીલ પક
પડીલ કી.

૦-૧૪-૦
૧૦-૬-૦

કુલ રૂ. ૧૦૮-૨-૦

ઉપરોક્ત નં. ૧૬ મારે મારા હકકે પાવતા રોક
આવી મારી તમા કેરેનો મીકુકકે કરીને આપવો.

સહી/- ઇ.ડી. પિલ્લાઈ.
કે.ઈ. ગોવિન્દ રાવીલ્લાય
ટ્રીચ.ગી. ઇજનેરખાતે.
૧૫/૧૫૧.

33

Suits.
Ahmedabad.
For a declaration that the Requisitioning of the plaintiff's property bearing M.C.No.1962 in Ahmedabad is illegal and for possession thereof.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 11904
Bombay Castle, 26th July 1951.

Legal Department
Read Government Resolution No.5285, dated the 12th May 1949.

Endorsement from the District Government Pleader, Ahmedabad No.588, dated the 20th March 1951, stating that the suit noted in the margin was decided by the 3rd Joint Civil Judge, Senior Division, Ahmedabad on the 16th March 1951, when the following order was passed:-

In the Court of the Civil Judge (Senior Division), Ahmedabad.

Civil Suit No.168 of 1949.

Saiyad Abdul Kadir Saheb Sardar Samusddin Kadri..... ... Plaintiff.

versus.

The Province of Bombay. & ors. .....Defendants

" For the reasons stated above, I dismiss the plaintiff's suit and order that the plff. do bear his costs and costs of defts.Nos.1 and 2 (of the latter in one set). Defts. Nos.3 and 4 to bear their own costs."

Letter from the District Government Pleader, Ahmedabad No.1218, dated the 9th July 1951, forwarding uncertified copies of the judgment and decree.

RESOLUTION: The result of the suit is recorded.

By order of the Governor of Bombay,

Issued 26/7

original R.T.Katarki

R.T.Katarki,
Deputy Secretary to Government.

To
The Revenue Department,
The Collector of Ahmedabad,
The District Govt.Pleader,Ahmedabad.

KML/25

Submitted for signature
PM
25.7.51
J.S NB 25/7
D.S (Civil)

Subject. after issue.

S Dwn 4/51

No272- S.O./51-S(133)
Government of India,
MINISTRY OF LAW.
.....

35 F
7-737

From

K.Y.Bhandarkar,
Solicitor to the Government of India.

L D. 13 DEC 1951

To

The Remembrancer of Legal Affairs,
Government of Bombay,
Legal Department,
BOMBAY.

New Delhi, the 11th December, 1951.

Subject:- Civil Revision Application No.1161 of 1951 in the High Court of Judicature Appellate Side, Bombay
Shriniwas Murahardeo Desai ... ... Applicant (Org.Plff.)

Versus

Union of India ... . Opposite (Org. Deft.)

.....

THE S... LAW
L... T
File No. 25747
14/12/51

Sir,

I enclose herewith a notice received through the Secretary to Government, Postal Department, Government of India, New Delhi from the High Court of Judicature (Appellate Side) Bombay in respect of above matter. The notice is not accompanied by a copy of grounds of appeal against the decision of the Civil Judge, Senior Division, Hubli in S.C.Civil suit No. 175 of 1950. It is also not known what Ministry of the Government of India were concerned in the litigation. In these circumstances it is not possible to take any action in the matter. I therefore request you to forward this notice to Government Pleader, Bombay and request him to obtain a copy each of the Grounds of appeal and copies of other connected papers, if any, and forward them to this Ministry in order to enable me to take appropriate steps in the matter.

The application is fixed for hearing on 14th January, 1952, the Government Pleader may be requested to enter appearance on behalf of Union of India and take an adjournment

P.T.O.

if necessary.

I am endorsing a copy of this letter direct to the Government Pleader Bombay for information and necessary action.

Yours faithfully,

(K.Y.BHANDARKAR)
Solicitor to the Government of India.

37 to 7
45

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

Civil Revision Application No: 1161 of 1951.

District: DHARWAR.

Shriniwas Muraharrao Desai of Sheshagiri residing at Haveri. (Original Plaintiff). — Applicant.

Versus

The Union of India. (Original Defendant.) (Scrutiny by Government Postal Department, Government of India, New Delhi.). — Opponent.

Claim Rs. 170/- for Process Fees.

The humble petition of the Petitioner abovenamed,

MOST RESPECTFULLY SHOWETH:--

1. That the Applicant is the owner of a two-storied house in his village of Hangal District Dharwar which he had let to the Opponent for purposes of a Post Office under a registered lease dated 1st of September 1944 executed by the Superintendent of Post and Telegraph.

2. That under the lease, the Opponent was entitled to occupy the house for a period of five years on payment of Rs. 10/- per month.

3. That the period of the lease expired on 31st A-ugust 1949.

4. That on the said date the Bombay Rents, Hotels and Lodging House Rates Act of 1947 had ceased to apply to the Hangal village (vide Notification in the Bombay Government Gazettee Part I page 4003 dated 30th August 1948).

39. #5

5. That the Applicant served a notice on the Opponent, requesting him to vacate the premises be-fore 1st of January 1950, and under the belief that the said Rents Act still applied to Hangal men-tioned in the notice that he wanted the house for his own bona fide purpose of personal occupation.

6. That the Applicant filed a suit on 18-4-1950 in the Small Cause Division of the Civil Judge, Senior Division at Hubli to recover possession of the suit premises and arrers of rent for 5 months.

7. That for purposes of Court-Fee, the claim was valued at Rs. 320-0-0 made up as follows:-

120-0-0 (For possession) one year's rent at the rate of Rs. 10/- per month.

200-0-0 Damages for 5 months at the rate of Rs. 40/- per month.

That for the purpose of jurisdiction the Applicant had valued the claim at Rs. 5000/-.

8. That two days later, the learned Civil Judge passed an order to the effect that the claim for dama-ges in lieu of rent should be reduced to Rs. 10/- per month and that the valuation for purposes of plea-ders' fee and jurisdiction should be the same as for Court-fees. That the plaint was amended as directed by the Court, on 9th June 1950.

9. That after the claim was thus corrected, the suit was registered on 9-6-1950 and notice to the Respondent was issued, the claim in the notice being stated as Rs. 170/- for both purposes.

10. That the suit was tried under the mistaken belief that the Rent Act of 1947 was in force at Hangal.

11. That the learned Civil Judge held that the --

Plaintiff did not prove that he wanted the premises for his personal use and dismissed the whole suit without deciding the question of arrears of rent.

11. That the learned Civil Judge alsoawarded costs on Rs. 5000/-.

12. That the Applicant feeling aggrieved by the said order, prays that the papers be called for under Sec. 115 of the C.P.Code, that the decree of the lower Court be set aside and that a just order be passed on the following among other grounds:-

i. The lower Court had no jurisdiction to try the suit or to pass the decree.

ii. The plaint should have been returned to the plaintiff for being presented to the proper Court, that is to say, to the same Court exercising ordinary jurisdiction.

iii. The suit for possession should have been allow-ed, as Part II of the Rents Act had ceased tohave operation in the Hangal village.

iv. In any case, there ought to have been a decree for arrears of rent or damages.

v. The lower Court acted with material irregulari-ty in not arising and deciding necessary issues but also in directing pleaders' fees to be paid to the Opponent on Rs. 5000/-.

And for this act of justice and kindness the Applicant as in duty bound shall ever pray.

High Court,
Bombay.
1st September 1951.

Sd/- G. P. Murdeshwar.
Advocate for the Applicant.

MVG:15-12.

43.49
13

In the Court of the Civil Judge, Senior Divison,

at Hubli. Ex.44.

S. C. Civil Suit No: 175 of 1950.

Shriniwas Muraharrao Desai of Sheshagiri, 66, agriculturist, of Haveri District Dharwar..... .....Plaintiff.

Against.

Union of India.....Defendant.

Claim Rs. 170/-.

This is a suit for recovery of possession and arrears of rent and compensation under the Rent Control Act.

8 The Deft's written statement is at Ex. 19. They plead want of valid notice under section 80 C. P. C. and Section 12 of the Rent Control Act. They say that the building is not required bona fide for his personal use. They are willing to pay the rent regularly. They cannot be evicted under the Rent Control Act.

The issues for decision are framed at Ex. 20:-

1. Whether plff proves thatthe notice under Section 80 C.P.C. is valid?
2. Whether plff proves that the tenancy has been terminated by a legal notice?
3. Is the suit barred by estoppeal?
4. It is proved by the Plff that the building is require -d reasonably and bona fide for his personal use?
5. Who is put to more hardship and inconvenience?
6. Whether plff can claim enhanced rent or damages?
7. Whether plff can claim possession under the Rent Control Act of ,947?
8. What order?

45 45 57

My findings are:--

1:- Not pressed. 2:- No. 3:- Not pressed.

4:- No. 5:- Does not arise.

6:- Does not arise. 7:- No. 8:- As per order below.

REASONS.

The deft does not press the first issue.

The suit premises have been let to the deft for the purposes of a post office. There is no dispute as regards the monthlvment which is Rs. 10/=. The Plff wants the deft to vacate the premises because the lease ⁄ expired on 31-8-1949 and he wants the premises bona fide for his personal use. The Plff admits in his cross-examination that the defts have been paying the rent regularly and that in fact they have paid rent to him till suit. If so on his own admission, he is not entitle to evict the defendant from the suit premises. No notice as contemplated by section 12 of the Rent Control Act is given to deft. The Plff at the trial stated that he wanted the premises not for his personal use but for the purposes of his Kamat i.e. for the purposes of his farm establishment. But on that groun he cannot evict the deft when it is not wanted by him bona fid for his personal use.

The plff with a viewto put the deft to heavy costs has in his notice Ex. 29 deliberately valued the suit at Rs. 5000/- for the purposes of jurisdiction and Pleader's fess. Subsequently he realised his folly and amended the plaint in respect of this point. The plff therefore should pay the Gover ment their costs on the basis of the original valuation of the suit. He should therefore pay the pleader's fees also on that basis. Hence my finding as above.

O_R_D_E_R_.

Plaintiff's suit is dismissed with costs. Plff to bear his own costs. Defendant's costs are to be assessed on th original valuation of the suit namely Rs. 5000/-.

20-4-1951.

Sd/- S. M. Bhoj.
Civil Judge, S.D.

SEAL OF THE COURT.

Sd/-
Clerk of the Court.

MVG: 15.12.

47 1753

In the Court of the Civil Judge, Senior Division,

at Hubli.

small Cause Suit No: 175 of 1950.

Plaintiff:- Shriniwas Muraharrao Desai of Sheshagiri, age 66, occupation agriculture, residence extention Haveri District Dharwar.

Vs.

Defendant:- The Union of India.

Claim Rs. 170/-

This suit filed on 18-4-1950.

This suit registered on 9-6-1950.

In this the abovenamed plaintiff begs to submit as follows:-

1. Suit Property:- The two storied residential building village Panchayat No:1110 of Hangal, District Dharwar situate within the following boundaries.

To the east: House of Budansab Katagi.

To the west: House of Gangadharpant.

To the south: Public Road.

To the north: Backyard of the house and beyond that public road.

2. The plff is the owner of the abovenamed house and backyard hereinafter called" the suit property". The deft has been occupying the suit property as a tenant for a fixed period of ~~xx~~ five years since 1944 by virtue of a registered lease deed, executed by the Superintendent of the Post and Telegraph Dharwar, on behalf of Government of India in Council on a rental of Rupees Ten per month. The deft is using it for the purpose of post office. The said lease has expired on 31-8--1949.

49 55 19

2. Now the plff has decided to live separately at hangal which is a convenient place for the managament of his estate. Thus for more than one reason too delicate to be mentioned here the Plff is compelled to live at Hangal.

The plff has accordingly intimated to the deft that he bona fide and reasonably requires the house for personal occupation and requested the deft to vacate the same on or before 1st January 1950. But the deft refuses to vacate the same.

The deft has not paid the rent from the month of September 1949.

The house being neglected by deft and is seriously damaged. Hence the suit for rent and ejectment of deft from the suit property and for damages.

3. The cause of action arose on 1st September 1949 and subsequently on 1st January 1950.

4. The suit property being situated within the special jurisdiction of this court and this being a suit against Government this court has jurisdiction to try this suit

Valuation: The suit being a suit for rent and possession is valued for the purposes of Court fees as follows:

Rs.120/0/0 One year's rent at the rate of Rs.10/- per month.

50/0/0 The amount of rent due and claimed in the suit at rate of Rs. 10/- per months.

---

*Rs. 170/-. Amount of damages and court fees i.e. paid on the same for the purposes of jurisdiction and pleader's fees. The valuation is the same. * The plaint is amended as per Ex. E

5. Notice under section 80 of the Civil Procedure Code has been served on the Secretary to G-overnment of India by registered post;

Prayer:-

1) The deft be ordered to deliver actual possession of the property to the plaintiff.

ii) That deft be ordered to pay Rs. 50/- * as rent and damages.

#57

iii) The plaintiff be awarded mesne profits from date of suit upto date of delivery of possession and costs of the suit.

This suit coming on this day the 20th April 1951 before Shri. S. M. Bhoj Civil Judge, Senior Division Hubli in the presence of Shri S. H. Deshpande Pleader for plaintiff and Shri B. R. Mathad Pleader for defendant, it is now hereby ordered and decreed as under:-

Plaintiff's suit is dismissed with costs.

Plaintiff do bear his own costs.

Defendant's costs are to be assessed on the original valuation of the suit namely Rs. 5000/-.

Bill of costs.

Plaintiff.		Defendant.	
Stamp for plaint Ex.1	Rs.30/0/0	Stamps for vakalt Ex. 10.	Rs.0/10/0.
" for vakalat Ex. 2	0/10/0.	" for applications Exs.13,16,18,25.	2/8/0.
" for processes Ex.1	1/0/0.	Pleader's fees on Rs. 5000/- assessed as per order of the Court-	190/0/0.
Pleader's fees on Rs. 170/-.	15/0/0.		
Total	48/8/0	Total	193/2/0.
Applications disallowed. Ex. 5, 22.	1/4/0.	Applications disallowed Exs. 13,16,18.	1/14/0.
Balance	47/4/0.	Balance	191/4/0.

Givin under my hand and seal of this Court on 20th day of A pril 1951.

Sd/- P. S. Kulkarni. (Seal).
Karkun.

Sd/- S. M. Bhoj.
Civil Judge, S. D.
5-6-51.

Pleader for Plff: Shri S. H. Deshpande.

Pleader for Deft: Shri Sd/- XXXXX B. R. Mathad. 5-6-51.

5 Dwr 4/57

53

G.G.P.—(J) J 160—80000—10-52
G.O., L.D., No. 1193 dated 7-12-15

[Spl.—Govt. Pl. H. C. Bom. 8

No. 1725 721

From

THE GOVERNMENT PLEADER, HIGH COURT,
BOMBAY;

To

The Secretary to Government, Legal Department,
~~The Collector of~~
The District Magistrate of

LEGAL DEPARTMENT

25 FEB 1953

Bombay.....24/2/.....1953

Sir,

With reference to this office letter No. 11768, dated 15-12-1951, I have the honour to ~~forward~~ return herewith papers in the case as noted in the margin, ~~and to request the favour of your acknowledging~~ the receipt thereof.

C.R. ~~Appeal~~ Application No. 1161 of 1951

Certified copies of High Court Judgment and Decree.

Yours faithfully,

V. J Desai

for Government Pleader, High Court.

THE SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT
File No. 4902
Sub No. 26/2/53 E

Submitted for information

File in S. DWP 4/57

Thu
26/2

Sol (M) 26/2

K. 415
~~426.~~

Rs.As.Ps.Fls. 2

Copying & comparing charges. 0-12-0

Paper charges. 0- 0-3

Total 0-12-3

Typed by G.S.Desai.
11 -9-1952

Examined by D.T. Patwardhan 7-8-52

Read by V.D.Sh[illegible] Annas twelve and pice three only.

Copy ready on 12-9-52

Copy delivered on 22-10-52

Sent by V.P.P. Regd. Post

A.P. Vaidya
Superintendent D. D.
12-9-1952

Shirdeam
Assistant Shirastedar

Civil Revision application No. 1161 of 1951.

....

Shrinivas Muraharrao Desai ... ... Applicant.
(Original plaintiff).

versus

The Union of India ... ... Opponent.
(Original Defendant).

Application praying that the order dated 20-4-51 passed by S.H. Bhoj, Esquire, Civil Judge (Senior Division) at Hubli in Small Cause Suit No. 175 of 1950, may be set aside.

Mr G.P. Murdeshwar, Advocate for the applicant.

Mr. The Government Pleader for the Opponent.

Coram :- Chagla, C.J.

24th July 1952.

Oral Judgment :

The Government Pleader on behalf of the Union of India agrees to hand over possession of the property in suit to the petitioner on or before the 31st July 1952 and also to pay arrears of rent if any on or before that date. There will be no order on the revision application except that the order of the trial Court as to costs will be varied . There will be no order as to costs of the suit. and no order as to costs of the revision application.

...

By order of the court
Sd. S.H. Belavadi.
Deputy Registrar.

True Copy

for Deputy Registrar.

The 12th day of September 1952.

K. 415/ ~~426~~ Re.As.Ps. Fls. 3

Copying & comparing charges. 1-2-0

Paper charges. 0-0-3

Total 1-2-3

Typed by G.S.Desai.
5 -9-1952
Examined by S.T.Vyas
Read by.

Rupee one annas two and pies three only.

Superintendent D.D.
9 -9-1952

Application for copy received on 7-8-52
Copy ready on 9-9-52
Copy delivered on 22-10-52
Sent by V.P.P. Regd. Post

Assistant Shersteder

In the ~~H/C~~ High Court of Judicature at Bombay.

Order passed by the High Court in the case of

Shrinivas Muraharrao Desai ... ... Applicant.
(Original plaintiff).

versus

The Union of India .... Opponent.
(Original defendant).

being Civil Revision Application No. 1101 of 1951.

Mr. G.P. Murdeshwar, Advocate for the applicant.

The Government Pleader for the Opponent.

Coram :- Chagla, C.J.

For the reasons stated in the accompanying judgment, the Court passes no order on the above Revision application wherein Rule was granted by it on the 14th day of November 1951 whereby the opponent was required to show cause why the decision of the Civil Judge (Senior Division) of Hubli in S.C. Civil Suit No. 175 of 1950 ~~on exhibit~~ should not be set aside.

The Court directs that there will be no order as to costs of the suit and no order as to costs of the Revision application

Dated this 24th day of July 1952.

Sd. S.H. Belavadi.
Deputy Registrar.

HIGH COURT APPELLATE SIDE CERTIFIED COPY BOMBAY

Bill of Costs in the High Court.

By the applicant.	Rs.As.Ps.
Stamps for application	5-0-0
Stamps for copies of decrees and judgments.	1-14-0
Stamps for Vakalatnama.	2-8-0
Bhatta for process.	1-4-0
Sectioner's fee.	7-3-0
Advocate's fee.	45-0-0
Stamp for affidavit.	0-8-0
Total	63-8-0

By the Opponent.	Rs.As.Ps.
Stamps for Vakalatnama (G.P. appears).	2-0-0
Advocate's fee.	45-0-0
Total	45-0-0

(Seal) Sd. S.H. Belavadi.

Deputy Registrar.

The 24th day of July 1952.

True Copy

for Deputy Registrar.

The 9th day of September 1952.